



## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R04-OAR-2021-0686; FRL-9124-01-R4]**

#### **Air Plan Approval; Kentucky; Fugitive Emissions Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky (Commonwealth), through the Energy and Environmental Cabinet (Cabinet) on October 15, 2020. The SIP revision updates the Commonwealth's regulation for the control of fugitive emissions. This revision contains minor non-substantive changes, grammatical edits, renumbering, the removal of one provision, the addition of one new requirement, and the incorporation of two definitions to support the new requirement. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0686 at [www.regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file

sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www2.epa.gov/dockets/commenting-epa-dockets](http://www2.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** Andres Febres, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S.

Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8966. Mr. Febres can also be reached via electronic mail at [febres-martinez.andres@epa.gov](mailto:febres-martinez.andres@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Overview**

On October 15, 2020, the Commonwealth submitted changes to the Kentucky SIP for EPA approval.<sup>1</sup> EPA is proposing to approve these changes to Regulation 401 KAR 63:010 - *Fugitive Emissions*, which was approved into the SIP on July 12, 1982 (47 FR 30059), and establishes control requirements for fugitive emissions.

### **II. Analysis of the Commonwealth's SIP Revision**

The October 15, 2020, SIP revision contains primarily minor non-substantive changes which concern minor language edits and renumbering changes throughout regulation 401 KAR 63:010. Additionally, the revision includes the removal of one provision, the addition of one new requirement, and the incorporation of two new definitions to support this requirement.

The bulk of the changes in the October 15, 2020, SIP revision concern clarification and minor language edits. For example, one language edit changes the word “promulgate” to “prescribe.” Another example of a language edit the Commonwealth made was to change the language in the “NECESSITY, FUNCTION, AND CONFORMITY” section of the rule to align more closely with the language in Kentucky’s implementing statute regarding the powers and

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<sup>1</sup> EPA notes that the Commonwealth’s submission was received on October 16, 2020. However, for clarity, EPA will refer to this submission by its cover letter date of October 15, 2020.

duties of the Cabinet. Additionally, Kentucky edited this section to update references to the rules that outline the Cabinet's power to promulgate the fugitive emissions rules. With respect to renumbering changes, the revision switches the order of Section 1, previously "Applicability," and Section 2, previously "Definitions." Other similar changes include the necessary renumbering of sections to incorporate the addition or removal of provisions, which are further discussed below.

The proposed changes seek to delete paragraph 4(2), a nuisance provision, from the SIP-approved rule. The Commonwealth moved the text of 4(2) to existing paragraph 3(4) in its revised state rule. However, as noted in the October 15, 2020, cover letter submitting these changes, the Commonwealth requests that EPA remove existing paragraph 4(2) from the SIP and not incorporate the text moved to paragraph 3(4). EPA is proposing to remove the SIP-approved version of paragraph 4(2) and not incorporate the text in paragraph 3(4) of the revised state rule into the SIP because this nuisance provision is not related to attainment and maintenance of the national ambient air quality standards (NAAQS) and is therefore not related to the CAA requirements for SIPs.<sup>2</sup>

The changes add a new requirement to Section 3 to use EPA's Reference Method 22 (*Visual Determination of Fugitive Emissions*) of appendix A-7 in 40 CFR part 60, as the standard method by which to determine the level of visible fugitive dust emissions beyond the lot line of the property on which emissions originate. The Commonwealth adds this method to confirm compliance with the opacity standard, as specified in Kentucky's Rule 63:010. As a part of the new requirement, the Commonwealth also adds specific emission standards, in the form of time and observational period limits, for all sources to which this rule applies. Specifically, the revised rule states that a source shall not cause, suffer, or allow visible fugitive emissions beyond the lot line of the property, observed using EPA's Reference Method 22, for more than 5 minutes

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<sup>2</sup> Excluding nuisance provisions that are unrelated to attainment and maintenance of the NAAQS from SIPs is consistent with longstanding Agency practice. *See, e.g.*, 85 FR 73636 (November 19, 2020).

in a 60-minute period, or more than 20 minutes in a 24-hour period.

Finally, the Commonwealth adds under Section 1 (formerly Section 2), the definitions for “Emission time” and “Observation period,” to define terms in the language from the Reference Method 22 requirements in Section 3. EPA has determined that the addition of Method 22 and these definitions is consistent with federal regulations. Without these requirements, it would be difficult to determine compliance with 401 KAR 63:010 because the previous version of the rule did not offer a standard method for determining visible emissions.

EPA has reviewed all changes in the October 15, 2020, SIP revision regarding 401 KAR 63:010 and has preliminarily determined that the changes are consistent with Federal regulations and do not interfere with attainment and maintenance of the NAAQS or any other applicable requirement of the Act. The changes strengthen the existing fugitive emission control standards in the Kentucky SIP. For these reasons, EPA is proposing to approve the changes to this rule into the SIP.

### **III. Incorporation by Reference**

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Kentucky’s Regulation 401 KAR 63:010 – *Fugitive Emissions*, state effective on June 30, 2020, which updates the Commonwealth’s fugitive emission provisions, with the exception of the nuisance provisions added to paragraph 3(4) for the reasons described in Section II. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

### **IV. Proposed Action**

EPA is proposing to approve the revision to Regulation 401 KAR 63:010 – *Fugitive Emissions*, which updates the Commonwealth’s fugitive emissions rule. EPA is proposing to

approve these changes because they are consistent with the CAA.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: February 17, 2022.

Daniel Blackman,  
*Regional Administrator,*  
*Region 4.*

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